

P-475/M-88-540WAIVING REFUND OBLIGATION AND CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of Rate Increases Petitioned by
Brainerd Telecom

ISSUE DATE: December 2, 1988

DOCKET NO. P-475/M-88-540

ORDER WAIVING REFUND
OBLIGATION AND CLOSING DOCKET

PROCEDURAL HISTORY

On July 27, 1988 Brainerd Telecom (the Company) filed a request to increase its intrastate toll rates. The rates proposed were essentially the same rates the Company had been charging since December of 1987. The Company filed the request upon learning that its current rates were not on file with the Commission, as required by Minn. Stat. § 237.07 (1986).

The Company stated that it had notified the Commission of the rate increase by sending the Department of Public Service (the Department) a copy of its notice to customers before the new rates went into effect. The Department had no record of receiving such a communication. The Department also contended that sending a copy of a customer notice was not adequate notice of a rate increase under Minn. Stat. § 237.60, subd. 2 (b) (1986).

The Department examined the proposed rates and recommended their approval, prospectively, with minor revisions. The Department also recommended that the Commission require the Company to refund the difference between the old rates and the new rates paid by customers prior to Commission approval of the new rates. The Department later computed the refund obligation to be approximately \$10,000.

On October 11, 1988 the Department submitted a supplemental report stating that the Company was going out of business, that its liabilities exceeded its assets, and that the Department recommended waiver of its refund obligation. One of the Company's owners, Richard Juillerat, appeared before the Commission on November 9, 1988 and confirmed the facts reported by the Department.

FINDINGS AND CONCLUSIONS

The Commission agrees with the Department that any refund obligation on the part of this Company should be waived. There would be enormous practical difficulties associated with requiring a refund at this point, and very little benefit.

The Company does not have the financial ability to make refunds. If the Commission ordered refunds, distribution would have to await the liquidation of the Company and action by a bankruptcy court. It is likely that the expense of determining the amounts due individual customers would equal or exceed the amount of the refunds.

Furthermore, this is not a case in which customers paid predatory rates and need refunds to make them whole. The Department recommended approval of the new rates with minor revisions. The reason for ordering refunds would be to illustrate the importance of complying with statutory filing requirements and thus maintain the reliability of Commission tariffs and the integrity of the regulatory process. Since the Company is going out of business, ordering refunds would not serve this purpose.

Finally, there is evidence that the Company tried to inform the Commission of the rate increase at issue, but lacked the expertise necessary to comply with formal regulatory requirements. While this lack of expertise does not excuse non-compliance, it can properly be considered in ordering refunds, a matter committed to Commission discretion.

For these reasons, the Commission will waive any refund obligation on the part of Brainerd Telecom and will close this docket.

ORDER

1. Any refund obligation on the part of Brainerd Telecom in connection with the rate increase effected in December of 1987 is hereby waived.
2. This docket is hereby closed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)